

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

16.

**O.A No. 44 of 2011**

**Ex Sep (Mess Waiter) Om Prakash**

.....Petitioner

**Versus**

**Union of India & Ors.**

.....Respondents

**For petitioner:** Sh. Lalit Kumar, Advocate.

**For respondents:** Sh. Ankur Chhibber, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. S.S.DHILLON, MEMBER.**

**ORDER**

**19.10.2011**

1. The petitioner in this petition has prayed that the respondents may be directed to grant him service pension with effect from the date of his discharge i.e. 13.11.1996 with 12% interest.
2. The petitioner was enrolled in the Army on 5.5.1981 and was discharged from service on 13.11.1996 on account of eight red ink entries, which was challenged by him by filing a writ petition before the Delhi High Court, which was transferred to this Tribunal and ultimately was dismissed by the Tribunal on 1.7.2010. The order of discharge was upheld. However, liberty was given to the petitioner to file a fresh petition for grant of pension on compassionate grounds if permissible under law. Hence the petitioner has filed the present petition for grant of the service element of pension. Learned counsel for the petitioner has submitted that the petitioner has already put in 15 years, 6 months and 9 days service. Therefore, he is entitled to pension, though he was discharged from service.

3. The respondents have filed reply. Learned counsel for the respondents has pointed out that as per Para 113 of Pension Regulations for the Army 1961, a person who is punished cannot claim for pension. Further, the petitioner has not completed the qualifying service for pension. It is stated that while the total service rendered by the petitioner is 15 years, 6 months and 9 days, out of which 349 days i.e. period of absence, are non-qualifying service. Therefore, the total qualifying service of the petitioner is only 14 years, 6 months and 20 days. Learned counsel for the petitioner has pointed out that there is no prohibition in Para 113 and in fact, the petitioner had put in 15 years and 6 months service. Even if it is accepted that the petitioner has put in 14 years, 6 months and 20 days, the remaining period can be condoned by the respondents, in exercise of the power under Army Rule 134 so as to enable the petitioner for pension.

4. We have bestowed our consideration to the rival contentions. Para 113 of the Pension Regulations deprives pension only to persons who are dismissed or removed from service. Para 113 reads as under:

**113.** (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is removed from service under Army Act Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.

(c) An individual who is discharged under the provision of Army Act and the rules made thereunder remains eligible for pension or gratuity under these Regulations.

**Note:** Those discharged from service due to misconduct, corruption, lack of integrity or moral turpitude are not normally eligible for gratuity, but they may be sanctioned gratuity in exceptional cases at the discretion of the President at a rate not exceeding that for which they are normally qualified.

So far as Clauses (a) and (b) are concerned, they clearly mandate that if a person is dismissed or removed from service, he will not be entitled to service benefits. But Note to it states that when a person has been removed from service on account of misconduct, corruption, lack of integrity or moral turpitude, still the President has the discretion to grant him a portion of the pension not exceeding the normal qualified pension. But, so far as the case of discharge, like the case of the petitioner, is concerned, Clause (c) states that the individual, if discharged from service under the provisions of the Army Act and the Rules made thereunder, is eligible for pension or gratuity under these rules, meaning thereby that the two clauses under Para 113(1) deal with cases of dismissal and discharge simplicitor. In the present case, the petitioner was discharged under Army Rule 13(3)(iii)(v) and this is nothing but removing a person who is undesirable to be retained in service on account of earning more than four red ink entries. Thus situation is almost analogous to that of a person who is compulsorily retired. In such cases, pension is not denied if the individual is otherwise eligible. The petitioner will have a double punishment by losing his service as well as losing the benefit of the services rendered by him. Therefore, in the present case, we are satisfied that the petitioner is entitled to pension. The period of absence (349 days) out of the total coloured service put in by the petitioner could be relaxed. The Government has the discretion to relax the

shortfall in service to the extent of one year under Regulation 134 of the Pension Regulations. Regulation 134 reads thus:

A competent authority may condone a deficiency of service in a particular rank not exceeding three months, except on voluntary retirement.

This was amended and three months' period was periodically extended and now stands as one year, by the amendment dated 19.1.2010. Therefore, as per the amended provision, the deficiency of service of upto one year can be condoned under Regulation 134.

5. Therefore, the authorities may consider the case of the petitioner for condonation of the shortfall of 5 months and 10 days service and after condoning the deficiency of service, the petitioner shall be given service pension in accordance with law. The petition is disposed of. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**October 19, 2011**  
**alx**